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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,474	07/23/2003	Robert Nicholson	50187/FLC/N322	1296

23363 7590 05/09/2005

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EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,474

Applicant(s)

NICHOLSON, ROBERT

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-13 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-9 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: EXAMINER'S ATTACHMENT

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 6, the scope of the claim is indefinite because the applicant did not positively claim the pipe in claim 1. However, claim 6 states that the spring clamp clampingly receives the pipe. This is confusing because the applicant was only claiming the clamp. Now, claim 6 tries to positively claim the pipe. Therefore, the scope of the claim is unclear. Appropriate correction is required. The claim will be examined as "best understood" until further clarification is required.

Claim Rejections - 35 USC § 102

Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole & Knudsen (332,383).

In regard to claim 1, Cole discloses a clamp capable of being used with a form and locating a pipe relative to the form, comprising a base (examiner's attachment of figure 3), the base comprising an upper portion and a standoff portion having a lower surface capable of being attached to an upper surface of the concrete form, and a spring clamp for engagement with a pipe in a clamping relationship, the spring clamp

extending from the upper portion of the base at a position vertically offset from the lower surface of the standoff portion of the base.

In regard to claim 4, Cole discloses the claimed invention, wherein the spring clamp further comprises a web portion adjacent to the upper portion of the base and having an inner surface, a first curved finger, and a second curved finger both extending from the web portion and having an inner surface, wherein the web portion's inner surface, the first finger's inner surface, and the second figure's inner surface together define a substantially circular clamping area for receiving the pipe.

In regard to claim 5, Cole discloses the claimed invention, wherein the first and second curved fingers further comprise a first and second entry portion having an inner surface, wherein the inner surfaces define a throated entry from the clamping area.

In regard to claim 6, as "best understood", Cole discloses the claimed invention, wherein the spring clamp is capable of receiving a pipe.

In regard to claim 7, Cole discloses the claimed invention, wherein the inner surface of the web portion is horizontally offset from a front surface of the standoff portion of the base.

Claim Rejections - 35 USC § 103

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole & Knudsen (332,383) in view of Mathews (4,244,542).

In regard to claims 8 and 9, Cole discloses the claimed invention except for specifically disclosing that the upper surface of the spring clamp or the web comprises a recessed area. Mathews teaches that it is known to place recessed areas on the bases

of spring clamps, figure 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a recessed area into Cole's device, because the recessed area will allow the spring clamp to have more spring and the recess will allow the device to be more resilient.

Allowable Subject Matter

Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10-13 are allowed.

Applicant's arguments with respect to claims 1 and 4-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 571-272-6843. The examiner can normally be reached on Monday through Thursday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Brian E. Glessner
Primary Examiner
Art Unit 3635

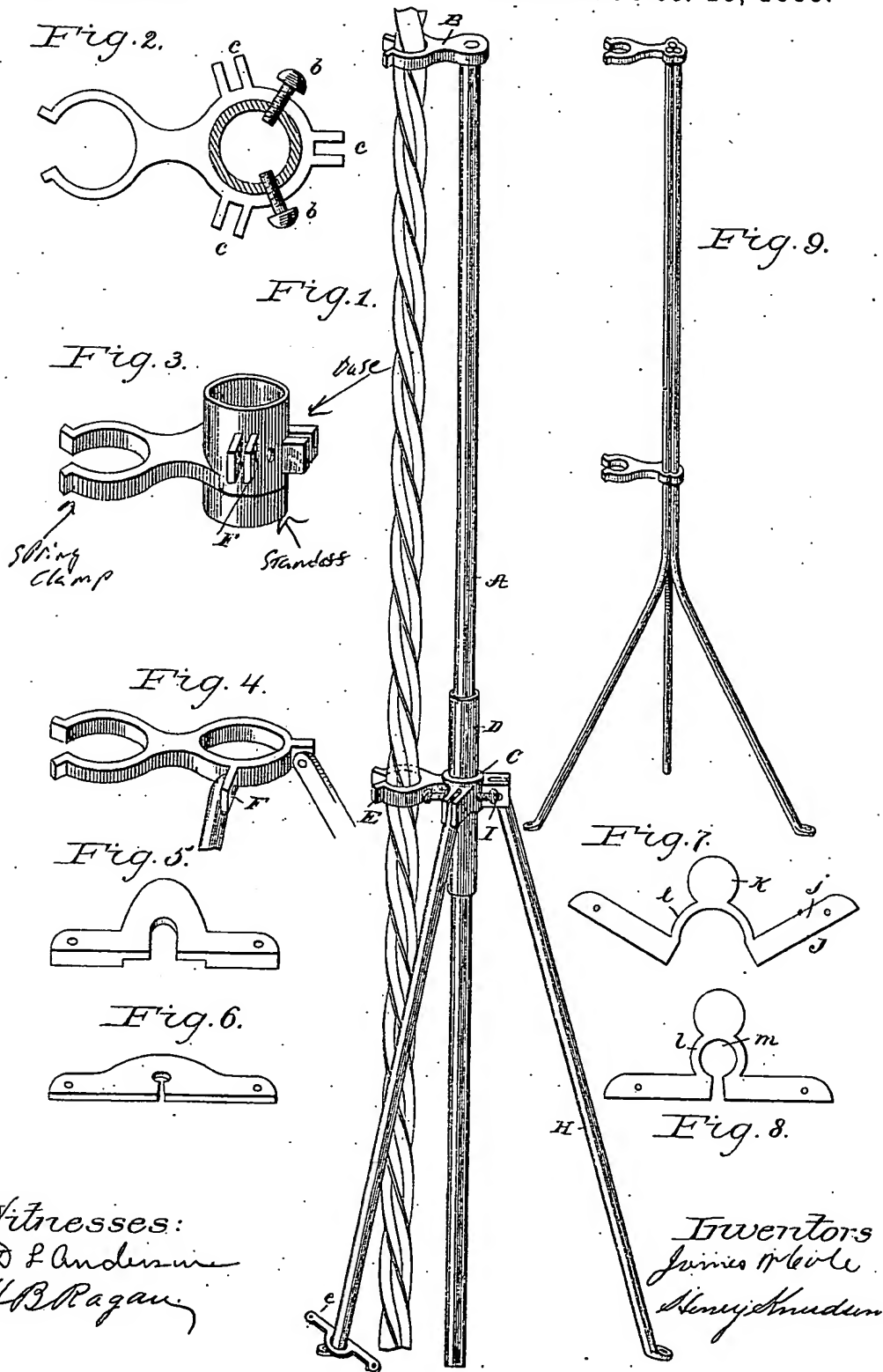
B.G.
May 4, 2005

(Model.)

J. W. COLE & H. KNUDSEN.
LIGHTNING ROD STANDARD.

No. 332,383.

Patented Dec. 15, 1885.



Witnesses:
D. P. Anderson
H. B. Pagan

Inventors
James M. Cole
Henry Knudsen